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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/549,314	09/16/2005	Vernon Charles Gibson	4702-23	8217

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EXAMINER

LU, C CAIXIA

ART UNIT PAPER NUMBER

1713

DATE MAILED: 07/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/549,314

Applicant(s)

GIBSON ET AL.

Examiner

Caixia Lu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 35-68 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 35-68 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/16/05</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of species [N,N-bis(1H-benzimidazol-2-ylmethyl)-N-methylamine]trichlorovanadium(III) (V-1), claims 35-45, 49-54 and 57-68, in the reply filed on June 8, 2006 is acknowledged.

The search results indicate that the elected species (V-1) is novel, the search is now extended to the rest of species.

### ***Specification***

2. The Abstract is incomplete in that Formula (A) is not included therein. Appropriate correction is requested.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 35-68 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(i) Throughout of the claims, the selective format of "selected from...and.." and "selected from...or..." are insistently used. The selective formats of various groups are improper in that it is not clear whether the individual members in the group are selected in alternatives only or in both alternatives and combinations. In general, when the members of in the group are individually chosen as alternatives, the format, "selected

from A, B,..., or X" or "selected from the group consisting of A, B,..., and X", should be used; and when the members in the group are chosen both in alternatives and combinations, the format "selected from the group consisting of A, B,..., X, and mixtures thereof" should be used. See MPEP 2173.05 (h). Applicants are requested to amend the selective formats of the instant claims according to the above guidance.

(ii) In the last line of claim 41 and second line from the end of claim 43, respectively, the term "and" should be replaced with "or" in order to be grammatical.

***Allowable Subject Matter***

5. The subject matters of the instant claims are allowable.

References such as Romano et al. (US 2004/0082464), Lavoie et al. (US 6,281,303) and Cenicerros-Gomez et al. (Polyhedron, 19, 2000, page 1821-1827) teach transition metal complexes which are substantially similar to those of the instant claims; however, none of those references teach or reasonably suggest a transition metal complex which meets all of the limitations of the transition metal complex of the instant claims. For example, Romano's transition metal complex of formula (3) on page 1 meets all of the limitation of the instant claims except that the transition metal "M" has to be a Group VIII B metal. Lavoie teach a transition metal complex with ligand (L1) as shown in col. 10, however, one of the groups corresponding to the "E" groups of Formula A of the instant claims is trivalent rather than the divalent group as required by the instant claims. Cenicerros-Gomez's complex (5) does not have a group

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corresponding to the "E" groups of the instant claims. Since no prior art teach or suggest the complex of the instant claims, the instant claims are deemed to be novel.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Caixia Lu whose telephone number is (571) 272-1106. The examiner can normally be reached from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful and the matter is urgent, the examiner's supervisor, David Wu, can be reached at (571) 272-1114. The fax numbers for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1700.

A handwritten signature in black ink, appearing to read 'Caixia Lu', is positioned above the printed name and title.

Caixia Lu, Ph. D.  
Primary Examiner